



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION  
CITY VIEW PLAZA II, SUITE 7000  
GUAYNABO, PUERTO RICO 00968-8069

MEMORANDUM

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG-11  
2013 AUG 13 A 9:33  
REGIONAL HEARING  
CLERK

DATE: August 7, 2013

SUBJECT: **In the Matter of Municipality of Fajardo**  
**Docket No. CWA-02-2013-3354**  
**Seven Seas Water Park**  
**NPDES Storm Water CGP Number PRR12A285**

FROM: Jaime Lopez *Jaime Lopez*  
Environmental Scientist  
Multimedia Permits and Compliance Branch

THROUGH: Carlos R. Villafañe *Carlos R. Villafañe*  
Acting Chief  
Multimedia Permits & Compliance Branch

TO: Jose Font  
Director  
Caribbean Environmental Protection Division

Attached for your review and concurrence is a copy of the Expedited Storm water Settlement Agreement (ESA) which assesses the Administrative Penalties in the above-referenced matter, and which has been agreed upon by the Municipality of Fajardo ("Respondent").

**Highlights of the ESA**

The Order assesses a penalty of \$2,350.00.

**Background**

The Region applied the Expedited Settlement Offer ("ESO") criteria, in this case for sites that are ESO-eligible. Sites which meet all of the following criteria can be ESO-eligible: (1) construction sites up to fifty acres; (2) sites where the penalty calculated via the ESO worksheet is no more than \$15,000; (3) sites where there is no evidence of significant environmental impact (e.g., turbidity observed in receiving water); (4) sites where the operator is a first-time violator; and (5) sites where there is no evidence of non-allowable storm water discharges (e.g., process wastewater discharge, such as truck washing or discharge from a concrete batch plant operation).

On January 24, 2013, EPA Region 2 issued an Administrative Compliance Order to the Respondent, Docket No. EPA-CWA-02-2013-3101, which included formal findings of violation and a schedule of compliance pursuant to Section 309 (a) of the CWA. EPA alleged that Respondent violated Section 301 of the Act, 33 U.S.C. §1311, for its failure to comply with certain requirements of the NPDES Construction General Permit for storm water runoff associated with construction activities during active construction project in Fajardo, Puerto Rico. An ESO assessing an Administrative Penalty was mailed to Respondent, Docket No. EPA-CWA-02-2013-3354. On May 31, 2013, Respondent responded to the ESO, agreeing to the terms. The ESO proposed the assessment of a \$2,350.00 penalty.

This ESO was public noticed on June 28, 2013. The public notice period closed on July 29, 2013. No comments were received.

#### **Penalty Justification**

The attached ESO for the Municipality of Fajardo imposes a penalty of \$2,350. This penalty is based upon the NPDES Industrial Storm Water Worksheet for Construction (ESO Worksheet).

#### **Recommendation**

The penalty addresses the violations under Section 301 of the Clean Water Act, 33 U.S.C. §1342. The violations have been remedied. The compliance schedule in the AO required the Respondent to, prepare and implement a satisfactory Storm Water Pollution Prevention Plan, and certify that it meets all federal requirements, along with final stabilization of the site. Since these requirements were satisfied after the 309 (a) Order was issued, the Agency is proceeding to use an expedited storm water settlement agreement to streamline the settlement for unpermitted facilities.

#### **Attachments**

cc: John Ciorciari, OPM/FMB  
Blake Edwards, OCFO/OFS/CFC

bcc: J. Lopez, CEPD-MPCB  
K. Maples, Regional Hearing Clerk (w/original agreement)  
File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY – REGION 2  
Caribbean Environmental Protection Division  
City View Plaza II - Suite 417  
#48 165 RD. Km. 1.2  
Guaynabo, Puerto Rico 00968-8069

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2013 AUG 13 A 9:33  
REGIONAL HEARING  
CLERK

EXPEDITED STORM WATER SETTLEMENT AGREEMENT  
Municipality of Fajardo  
Docket Number: CWA-02-2013-3354

**Municipality of Fajardo** (herein the "Respondent") is a "person," within the meaning of § 502(5) of the Clean Water Act ("the Act" or "CWA"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Expedited Settlement Offer Deficiencies Form" (herein the "Form"), which is hereby incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for the deficiencies specified in the Form.

Respondent operated in violation of Section 301(a) of the Act, 33 U.S.C. § 1311, and failed to comply with the National Pollutant Discharge Elimination System ("NPDES") storm water permit (2012 CGP) authorized under Section 402 of the Act, 33 U.S.C. § 1342, as noted on the attached Form.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over the allegations and any "person" who "discharges pollutants" from a "point source" to "waters of the United States". Respondent neither admits nor denies the allegation(s) specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) specified in the Form for a penalty of **\$2,350**. Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s); (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8) of the Act, 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that it has corrected any deficiencies identified in the Form, and to the best of its knowledge, is in compliance with the NPDES permitting program.

Respondent certifies that within 10 days of receiving notice from EPA that the Agreement is effective ("SO ORDERED") it will sent a bank, cashiers or certified check for the amount specified above, payable to the "Treasurer, United States of America" to:


Regional Hearing Clerk  
U.S. EPA, Region 2  
In the Municipality of Fajardo  
Docket No.: CWA-02-2013-3354  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

This Agreement settles EPA's civil penalty claims against Respondent for the CWA violation(s) specified in this Agreement. However, EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be in the public interest.

This Agreement is binding on the parties signing below and effective thirty (30) days from the date it is signed ("APPROVED") by the Director of the Caribbean Environmental Protection Division unless a petition to set aside the Order is filed by a commenter pursuant to § 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C) and Part 22.

If Respondent does not sign and return this Agreement as presented within 30 days of the date of its receipt, the proposed Agreement is withdrawn without prejudice to EPA's ability to issue any order or file any enforcement action for the violation(s) identified in the Form.

APPROVED BY EPA:

  
Jose C. Font  
Director  
Caribbean Environmental Protection Division

Date: August 7, 2013

APPROVED BY RESPONDENT in accordance with 40 C.F.R. § 122.22:

Name: Hon. Anibal Melendez


Title: Mayor

Signature:  Date: 5-31-2013

More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and EPA has received no comments concerning this matter.

Having determined that this CAFO is authorized by law and is in the public interest,

IT IS SO ORDERED:

  
Jose C. Font  
Director  
Caribbean Environmental Protection Division

Date: August 7, 2013